

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS  
PD-0035-18

FILED  
COURT OF CRIMINAL APPEALS  
6/27/2018  
DEANA WILLIAMSON, CLERK

FREDDY GARCIA

§

VS.

§

On Petition for Review of

§

No. 14-16-00242-CR

§

Court of Appeals

§

Fourteenth District of Texas

THE STATE OF TEXAS

§

**APPELLANT'S MOTION FOR FOUR-DAY EXTENSION  
OF TIME TO FILE RESPONSE BRIEF ON THE MERITS**

Appellant, Freddy Garcia, moves for leave to file his reply to the State's petition for discretionary review, in the interest of justice.

**TEX. R. APP. P. 10.5(b) statement:**

- (A) Deadline for filing: June 25, 2018
- (B) Length of extension sought: 4 days
- (C) Facts relied on: The Court has generously given Appellant an additional 20 days to file Appellant's merits brief, and counsel has been working diligently on it, with interruptions to file one brief subject to abatement in the court of appeals, and to arrange an in-person visit with a client in TDCJ custody 70 miles from Houston, where counsel resides and works. The need for the client meeting arose unexpectedly when TDCJ denied counsel's request for a telephone conference with the client, which normally is granted.

Nonetheless, work on Appellant's brief has continued through the past two weekends, and the brief is nearly complete. The State in this case is asking the Court to

overrule longstanding precedent regarding error when a trial court is required to order the State to elect between offenses to submit to the jury. A thorough response to this issue involves review of a long history of federal and state constitutional law cases, governing a variety of constitutional and non-constitutional issues. Further, counsel's arthritis- and immune-related disability has flared up the past few weeks, slowing down her ability to type and requiring her to take frequent breaks throughout the writing process.

Counsel anticipates the brief will be complete by Friday, June 29, 2018, and respectfully requests an extension of time, in the interest of justice. This case will have far-reaching impact on the hundreds of child sex assault cases that involve evidence of multiple offenses. The Court, and the jurisprudence of this state, will benefit from receiving the best work product counsel can produce.

(D) Number of previous extensions: 1

**Tex. R. App. P. 10.5(c) statement:**

(A) Court of appeals: Fourteenth Court of Appeals (Houston)

(B) Date of court of appeals judgment: December 14, 2017

(C) Case number and style: *Freddy Garcia v. State*, Cause No. 14-16-00242-CR

(D) Motions for rehearing: The State filed a Motion for Rehearing on July 31, 2017. On December 14, 2017, the court of appeals denied the motion, but entered a substitute opinion. No other motions for rehearing or en banc reconsideration were filed.

PRAYER

Appellant respectfully requests this motion be granted and the Court permit him an extension of time until June 29, 2018, to submit his response brief on the merits.

Respectfully submitted,

**ALEXANDER BUNIN**

Chief Public Defender

Harris County Texas

*/s/ Cheri Duncan*

---

**CHERI DUNCAN**

Assistant Public Defender

Harris County Texas

State Bar No. 06210500

1201 Franklin, 13<sup>th</sup> Floor

Houston Texas 77002

(713) 368-0016

(713) 368-9278 (Fax)

cheri.duncan@pdo.hctx.net

Attorney for Appellant,

Freddy Garcia

**CERTIFICATE OF SERVICE**

I certify that a copy of Appellant's Motion for Leave to File Out-of-Time Reply to Petition for Discretionary Review was served electronically on the Appellate Division of the Harris County District Attorney's Office and the State Prosecuting Attorney on June 26, 2018.

*/s/ Cheri Duncan*

---

**CHERI DUNCAN**